

APPEAL NO. 022673
FILED DECEMBER 9, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 24, 2002. The hearing officer determined that the compensable injury of _____, does not include an injury to the low back and bilateral carpal tunnel syndrome (CTS). The appellant (claimant) appeals the determination on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed in part, and reversed and remanded in part.

LOWER BACK CONDITION

The hearing officer did not err in determining that the compensable injury does not include an injury to the low back. The parties stipulated that the claimant sustained a compensable injury in the form of bilateral plantar fasciitis, on _____. The claimant contends that his low back condition is due to his inability to bear weight or walk on his left leg as a result of his compensable injury. This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer considered the evidence and determined that the claimant's low back condition was attributable to hepatitis B, degenerative disc disease of the lumbosacral spine, and phosiratic arthritis. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

BILATERAL CARPAL TUNNEL SYNDROME

The hearing officer erred in determining that the compensable injury did not include bilateral CTS. The claimant contends that his bilateral CTS resulted from the use of crutches for his compensable injury. The claimant provided medical evidence in support of his contention. Among the medical evidence was an emergency room record, dated January 18, 2002, which indicated that the claimant fractured his right hand in a fight at a local bar. Despite this evidence, the hearing officer made the following findings of fact:

FINDINGS OF FACT

4. On or about November 12, 2000, Claimant was involved in a fight at a local bar which resulted in a fracture to Claimant's right hand.
5. Sometime in November 2000, Claimant was diagnosed with bilateral carpal tunnel syndrome.
6. Claimant's low back condition and bilateral carpal tunnel syndrome do not naturally flow from Claimant's compensable injury of bilateral plantar fasciitis.

The hearing officer's determination that the bilateral CTS did not result from the compensable injury appears to be based upon confusion concerning the date on which the claimant broke his hand. Although the claimant appeared to indicate in response to questioning from the hearing officer that he broke his hand in November 2000, the medical evidence is clear that such injury occurred on or about January 18, 2002, well after the claimant was diagnosed with bilateral CTS. The hearing officer's determination with regard to bilateral CTS based on Finding of Fact No. 4, therefore, is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra. Accordingly, we reverse the hearing officer's determination with regard to bilateral CTS and remand for further consideration of the evidence.

OTHER MATTERS

The claimant alleges that the hearing officer demonstrated bias in reaching her decision and requests recusal of the hearing officer. We find no support in the record for claimant's contention that the hearing officer was motivated by or in any way demonstrated personal bias against the claimant. The mere fact that the hearing officer issued a decision adverse to the claimant does not, in our view, demonstrate personal bias but is the prerogative of the hearing officer as sole judge of the weight and credibility of the evidence. In the absence of a showing of bias, the hearing officer need not be recused from this proceeding on remand.

The decision and order of the hearing officer are affirmed with regard to the claimed low back injury and reversed and remanded with regard to the bilateral CTS injury.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See

Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
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Edward Vilano
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica Lopez
Appeals Judges